

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

SALVATORE COTTONE,  
Petitioner,

VS.

COLE JETER, Warden,  
FCI-Fort Worth,  
Respondent.

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CIVIL ACTION NO.4:06-CV-044-Y

ORDER ADOPTING  
MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS

In this action brought by petitioner Salvatore Cottone under 28 U.S.C. § 2241, the Court has made an independent review of the following matters in the above-styled and numbered cause:

1. The pleadings and record;
2. The proposed findings, conclusions, and recommendation of the United States magistrate judge filed on June 8, 2006; and
3. The petitioner's written objections to the proposed findings, conclusions, and recommendation of the United States magistrate judge filed on June 16, 2006.

The Court, after de novo review, concludes that Cottone's objections must be overruled, that the motion to dismiss should be granted, and that the petition for writ of habeas corpus under 28 U.S.C. § 2241 should be dismissed for lack of jurisdiction, for the reasons stated in the magistrate judge's findings and conclusions.<sup>1</sup>

Therefore, the findings, conclusions, and recommendation of

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<sup>1</sup>In his written objections, petitioner Cottone, acknowledging that he cannot meet the "savings clause" test to proceed under 28 U.S.C. § 2241, nor the pre-conditions to filing of a successive motion under 28 U.S.C. § 2255, argues such limitations amount to an impermissible suspension of his right to file a petition for writ of habeas corpus under Article I, Section 9 of the Constitution. The Court of Appeals for the Fifth Circuit has rejected this argument. See *Wesson v. U.S. Penitentiary Beaumont, TX*, 305 F.3d 343, 346-47 (5th Cir. 2002), cert. denied, 537 U.S. 1241 (2003), citing *Reyes-Requena*, 243 F.3d at 893, 901 n. 19. Cottone's objection on this ground is thus overruled.

the magistrate judge are ADOPTED.

Respondent Jeter's May 3, 2006, motion to dismiss [docket no. 10] is GRANTED.

Salvatore Cottone's petition for writ of habeas corpus under 28 U.S.C. § 2241 is DISMISSED for lack of jurisdiction.

SIGNED June 20, 2006.

  
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TERRY R. MEANS  
UNITED STATES DISTRICT JUDGE

